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IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

FILED
COURT OF APPEALS

MAR 30 2000

JAMES CISSELL
CLERK OF COURTS
HAMILTON COUNTY, OH

STATE OF OHIO
Appellee,

CASE NO: C-10046

vs.

DEFENDANT'S OPPOSITION TO
STATES MEMORANDUM IN OPPOSITION
OF MARCH 3, 2000.

REGINALD ALLEN
Appellant,

Now comes defendant-appellant, hereby opposes the States Memorandum In Opposition, by and through this pro-se Opposition, defendant-appellant sets forth his claims that constitute plain error and hold substantial grounds for review, in all fairness and professional duty the said claims should have been advanced by appellate counsel.

Respectfully submitted,

Reginald Allen

Reginald Allen
352-308
P.O. Box 7010
Chillicothe, Ohio 45601

FILED

2000 MAR 30 PM 2:30

JAMES CISSELL
CLERK OF COURTS
HAM. CNTY. OH

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposition and attached rider of Memorandum have been sent by regular U.S. Mail to the Hamilton County Prosecutors Office, at their last known address, on the 25 day of March 2000.

Reginald Allen

Reginald Allen

EXHIBIT

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MEMORANDUM

The State allege's that defendant-appellant claims of ineffective appellate counsel has not been demonstrated.

In *Strickland v. Washington* (1984), 466 U.S. 688, " the court held that:

* * * In any case presenting an ineffective claim, the preformance inquiry must be weather counsels assistance was reasonable considering all the circumstance * * * [Id at 688]

Defendant-Appellant brings to attention his claim's (1) and (3), of his Application for Reopen pursuant to App R. 26 (B). Claim (1) Use of Defendant's prior bad acts; (2) Prosecutorial Misconduct. In *State v. Hirsh* (1998) 120 Ohio App 3d 294 [6-9] Nevertheless, the question remains how much detail about the prior conviction the state needed to make its point to the jury. As with all evidence, other acts evidence is subject to the relevancy and fairness requirements of Evid R.403 (A) and must be excluded if it probative value is substantially outweighing by the danger of unfair prejudice. *Soke*, supra 105 Ohio App 3d at 249, 663 N.E. 2d at1001; *State v. Matthews* (1984) 14 Ohio App. 3d 440, 442, 14 OBR 559, 561-562, 471 N.E. 2d 849, 851-852

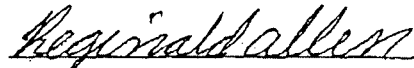
Defendant-Appellant's, appellate counsel could have argued the on appeal of prosecutorial misconduct, during either the guilt or penalty phase of trial as in *Scott v. Anderson* 58 F Supp 2d (N.D. Ohio 1998) 748 [8] para 5.

It has been well established by the courts as in *Jones v. Barnes* 103 S. Ct 3308 (1983) " which reversed, concluding under " *Anders v. California* 386 U.S. 738, 87 S.Ct 1396, 18 L.Ed. 2d 493 which held that an appointed attorney must advocate his clients cause vigorously and may not withdraw from a nonfrivolous appeal, appointed counsel must present on appeal all non-frivolous arguments requested by his client. In such the Court of Appeals held that respondent's counsel had not met this standard in that he had failed to present certain nonfrivolous claims.

CONCLUSION

WHEREFORE: Defendant-Appellant's claims have constituted the due process of review, if raised by appellate counsel, may or would have constituted reversible error on his appeal. For these reasons, the defendant-appellant respectfully request that the application for opening be set for full briefing.

Respectfully submitted,



Reginald Allen
352-308 pro-se